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No. 93-875

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

MACEO G. WILLIS, JR.,
Cross-Petitioner,
v.
CITY OF CHICAGO,
Cross-Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR CROSS-RESPONDENT CITY OF CHICAGO IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a plaintiff who will enjoy no benefit from a precedent that he obtained can recover attorney's fees because of the importance of the court of appeals' decision.

2. Whether court-appointed counsel are entitled to attorney's fees in cases in which they produced no tangible benefit for their client, and would not receive attorney's fees had they been retained.

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OPINIONS BELOW

The opinion of the court of appeals is reported at 999 F.2d 284 (7th Cir. 1993), and is reprinted at Pet. App. 1a-15a. The opinion of the district court concerning cross-petitioner's entitlement to attorney's fees is reported at 784 F. Supp. 1360 (N.D. Ill. 1992), and is reprinted at Pet. App. 16a-28a.

STATEMENT

Willis brought this action under 42 U.S.C. § 1983, alleging that the period of time between his arrest for rape and his initial appearance in court violated the Fourth Amendment. R. 1. The police held Willis approximately 45 hours before his initial appearance in court while they

arranged lineups so that rape victims could view him. Pet. App. 2a-4a, 8a. On August 19, 1986, Willis was convicted of aggravated kidnapping and rape, for which he is now serving a 60-year sentence. R. 90 at 1; R. 155 at 2. The district court held that the City of Chicago's policy authorizing police officers to postpone presenting an arrestee in court for a determination of probable cause and bail when there is a "necessity for the detention of an arrestee for a period of time longer than that which might routinely be expected, in order that they may continue the investigation," R. 90 at Tab 26 at 9, was unconstitutional.[1] The issue of damages was tried to a jury, which awarded Willis nominal damages of $1.00 on his excessive length-of-detention claim. R. 170. The City then took an appeal from the district court's judgment. R. 183.

While the City's appeal on the merits was pending, the district court awarded Willis $139,350.43 in attorney's fees under 42 U.S.C. § 1988. R. 218. The City then took a second appeal from that award. R. 219. Both appeals were consolidated for argument and decision. On July 30, 1993, the court of appeals affirmed the district court's judgment on liability, but reversed its award of attorney's fees. Applying this Court's decision in *Farrar v. Hobby*, 113 S. Ct. 566 (1992), the court of appeals concluded that, as in *Farrar*, "[t]his litigation accomplished little beyond giving petitioner[] the moral satisfaction of knowing that a federal court concluded that [his] rights had been violated in some unspecified way." Pet. App. 14a (first brackets in original) (quoting *Farrar*, 113 S. Ct. at 574).

The City of Chicago has filed a petition for certiorari (No. 93-657) in which we seek review of the decision of the court of appeals that any delay in an arrestee's initial appearance in order to investigate more fully the circum-

[1] The facts relevant to Willis's underlying claim are set out at greater length in our petition for certiorari. See Pet. 2-8, *City of Chicago v. Willis*, No. 93-657.

stances relevant to the arrestee's eligibility for bail, and therefore to prepare for the bail hearing to be held at the arrestee's initial appearance, is unconstitutional. Willis has filed this cross-petition, seeking review of the court of appeals' decision concerning his entitlement to attorney's fees.

ARGUMENT

BECAUSE WILLIS WILL DERIVE NO MEANINGFUL BENEFIT FROM THE JUDGMENT BELOW HE IS NOT ENTITLED TO ATTORNEY'S FEES.

In *Farrar v. Hobby*, 113 S. Ct. 566 (1992), this Court held that litigants who recover only nominal damages are ordinarily not entitled to recover attorney's fees under 42 U.S.C. § 1988. In his cross-petition, Willis does not ask this Court to reexamine that holding, but simply argues that it was improperly applied in this case. He cites two bases for an entitlement to fees notwithstanding *Farrar*: first, the importance of the legal principle established by the decision of the court of appeals in this case, and second, the fact that his counsel was appointed, even though counsel obtained no victory of any significance to Willis. We readily acknowledge the importance of the decision of the court of appeals in this case; in our petition for certiorari and in the briefs of amici in support of that petition there is considerable discussion of why the decision below is of great significance. But while a decision about the procedures the police must follow in preparing for bail hearings may be of great importance to many, it is of no help to Willis. As a result of the underlying charge that gave rise to this litigation, Willis has been convicted of rape, that conviction has become final, and he is now serving a 60-year sentence. Hence, the change in the law that the decision below has worked contains no practical significance for Willis. For that reason, his victory is purely technical, and does not entitle him to attorney's fees.

1. While agreeing that the recovery of nominal damages normally forecloses any entitlement to attorney's fees, Willis focuses on the importance of the precedent he has obtained. Although he acknowledges that his lawsuit was not the reason the City rescinded the policy at issue below, Pet. 11 (a point made by the court of appeals as well, see Pet. App. 14a-15a n.5), he notes that the holding below, by condemning delays in an arrestee's initial judicial appearance for investigative purposes, has considerable importance for the City's current policy. With that we fully agree; indeed, in our petition for certiorari, we discuss at some length the importance of the holding below for law enforcement, as do the amici supporting our petition. From this, Willis argues, relying on *Paris v. HUD*, 988 F.2d 236 (1st Cir. 1993), that his lawsuit was the "catalyst" for a significant change in the law. But the fact that Willis has obtained an important development in the law is not a basis for awarding him attorney's fees unless he can also establish that this development is of benefit to him.

This principle was established in two decisions of this Court, *Rhodes v. Stewart*, 488 U.S. 1 (1988) (per curiam), and *Hewitt v. Helms*, 482 U.S. 755 (1987). The plaintiffs in both cases claimed to have obtained important changes in prison policies as a result of their lawsuits. The *Rhodes* plaintiffs obtained a declaration that prison policies concerning magazine subscriptions were unconstitutional and an order directing Ohio prison officials to comply with the "proper procedural and substantive standards." 488 U.S. at 2. Hewitt contended that his lawsuit had been the catalyst in the creation of a new Pennsylvania Bureau of Corrections policy concerning inmate disciplinary decisions. See 482 U.S. at 759. Yet the plaintiffs in both cases were held not to be entitled to attorney's fees because the changes they procured did not benefit them: Hewitt had been released from prison by the time the district court had ruled, as had one

of the *Rhodes* plaintiffs, and the other *Rhodes* plaintiff had died. See 488 U.S. at 3-4; 482 U.S. at 759-64. Thus, as this Court later wrote, citing *Hewitt* and *Rhodes*, in *Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782 (1989), "the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between *itself* and the defendant." *Id.* at 792 (emphasis supplied).

Willis cannot show how the precedent he has obtained will benefit him. He is serving a 60-year sentence; the likelihood that the Chicago Police Department's policies governing the period of time between an arrest and the arrestee's initial judicial appearance will affect him is remote, to say the least.[2] Indeed, that possibility is likely slimmer than the likelihood that the plaintiffs in *Rhodes* or *Hewitt* would return to prison, and at that point derive some benefit from the change in prison policies they had helped to secure. Accordingly, this case is controlled by *Farrar v. Hobby*, as the court of appeals concluded. Willis obtained nothing more than "the moral satisfaction of knowing that a federal court concluded that [his] rights had been violated in some unspecified way." 113 S. Ct. at 574. Certainly Willis identifies no decision in any other circuit awarding attorney's fees on comparable facts, nor does he explain why this scenario is of such overriding importance that it merits this Court's review.

2. Willis also claims that because his counsel was appointed pursuant to a local rule requiring members of the trial bar to "be available for appointment by the court to represent or assist in the representation of those who cannot afford to hire a member of the trial bar," Pet. App. 31a (quoting N.D. Ill. R. 3.31), he should recover attorney's fees. He argues that fees are appropriate because counsel was "not provided an opportunity to make the

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[2] Illinois has abolished parole and employs a determinate sentencing scheme that requires Willis to serve at least approximately half of his 60-year sentence. See 730 ILCS paras. 5/3-6-3 & 5-8-1 (1992).

type of cost-benefit analysis which typically occurs in deciding whether to undertake the representation of a client and which is demanded of non-appointed counsel under *Farrar*." Pet. 15. Willis cites no authority supporting the rule he urges, and we are aware of none. Nor is such a rule supportable.

The general rule is well settled that, absent a statute expressly providing for the recovery of attorney's fees, such fees may not be recovered. *E.g., Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975). We explain above why Section 1988, as construed in *Farrar*, does not authorize the recovery of attorney's fees in this case, and plainly nothing in N.D. Ill. R. 3.31 purports to authorize the recovery of attorney's fees. Willis has not contested, at any point in this litigation, the authority of the district court to require counsel to accept appointments pursuant to its Rule 3.31 without assurance of compensation, nor has he contested the validity of the Rule itself. Thus there is no basis for Willis's recovery of fees.

Rule 3.31 recognizes the widely acknowledged ethical obligation of attorneys to represent those who lack the means to obtain counsel. See, *e.g., Mallard v. United States District Court*, 490 U.S. 296, 310 (1989); *id.* at 310-11 (Kennedy, J., concurring); *id.* at 313-17 (Stevens, J., dissenting). Willis's novel submission would convert this ethical obligation into something quite different—merely another way of generating revenue for one's practice. Plainly, Willis's understanding of the scope of counsel's ethical obligation is quite different from that embodied in N.D. Ill. R. 3.31.

While local rules requiring counsel to accept appointments to represent indigent persons may well raise significant issues (indeed, the question whether district courts have inherent authority to appoint counsel for indigent litigants was reserved for decision in *Mallard*, see 490

U.S. at 310), resolution of those issues should await a case in which a litigant contests the validity of such a rule. Here, counsel accepted appointment knowing he would be compensated, if at all, under Section 1988. As we explain above, that statute does not authorize recovery of attorney's fees in this case, and it is settled law that recovery of fees should not be permitted in a case such as this absent statutory authorization. The petition, therefore, raises no substantial question for this Court's review.

CONCLUSION

The cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

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